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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

**SMITH & NEPHEW, INC. and JOHN O.
HAYHURST, M.D.,**

Case No. CV05-611-KI

STIPULATED CONSENT JUDGMENT

Plaintiffs,

PATENT CASE

v.

BIOMET, INC. and ARTHROTEK, INC.,

Defendants.

Pursuant to Fed. R. Civ. P. 41(a)(1)(ii), and (c) the Parties hereto, by their respective undersigned counsel of record, hereby stipulate and agree that, subject to the approval of this Court, that this Stipulated Consent Judgment shall be entered, and this civil action shall be hereby dismissed as follows:

1. This Court's Opinion and Order of November 21, 2005 granting a Preliminary Injunction shall remain in force and effect permanently, and this Court shall retain jurisdiction over enforcement of such Preliminary Injunction and certain ones of the terms of settlement amongst the parties;

2. All remaining claims of plaintiffs' Smith & Nephew, Inc. ("Smith & Nephew") and John O. Hayhurst, M.D. ("Hayhurst") are hereby dismissed without prejudice;

3. The defenses raised by defendants Biomet, Inc. ("Biomet") and Arthrotek, Inc. ("Arthrotek") in this civil action with respect to the infringement allegations that were asserted against their SureFire product are hereby dismissed with prejudice;

4. Smith & Nephew, Hayhurst, Biomet and Arthrotek, and each of them, shall retain the right and ability to assert, and/or otherwise litigate, any and all claims and/or defenses (including counterclaims) relative to the issues of infringement, claim construction, enforceability and/or validity of U.S. Patent No. 5,417,691 ("the '691 patent"), and any other claims and defenses, together with the right to appeal same, whether asserted in this civil action or not; relative to any product of Biomet and/or Arthrotek that is neither the same as, nor essentially the same as, the SureFire product as it existed as of November 21, 2005. As used herein, the term "essentially the same as the SureFire product" means that any changes from the SureFire product are merely colorable and unrelated to the limitations in the claims of the '691

patent, as the phrase "essentially the same as" was used in the case of *Hallco Mfg. Co., Inc. v. Foster*, 256 F.3d 1290 (Fed. Cir. 2001);

5. Each Party shall bear its own costs and attorneys' fees.

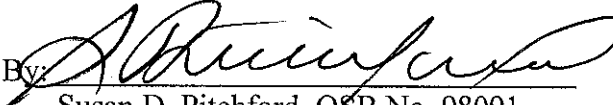
IT IS SO ORDERED:

Entered this ____ day of _____, 2007.


Honorable Garr M. King
United States District Judge

Approved on Behalf of Plaintiffs
JOHN O. HAYHURST, M.D.
and SMITH & NEPHEW, INC.

Approved on Behalf of Defendants
BIOMET, INC. and ARTHROTEK, INC.

By: 

Susan D. Pitchford, OSB No. 98091
Of Attorneys for Plaintiffs

By: 

Laura Caldera Taylor, OSB No. 99378
Of Attorneys for Defendants

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